

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note  
REVISED**

**BILL NUMBER:** House Bill 341 (First Edition)

**SHORT TITLE:** Controlled Substances/NBOMe & Other Drugs.

**SPONSOR(S):** Representatives Jackson, Faircloth, Horn, and Stevens

<b>FISCAL IMPACT</b> (\$ in millions)					
	<input type="checkbox"/> Yes		<input type="checkbox"/> No		<input checked="" type="checkbox"/> No Estimate Available
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2015					
<b>TECHNICAL CONSIDERATIONS:</b> None					

**Revision Note:** *This note has been revised to correct the fiscal year column headers in the table above.*

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address the expansion of several existing offenses. However, given that there is no historical data on the number of additional offenses that may result from the bill, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of one of the impacted offenses:

- Administrative Office of the Courts: \$88 to \$4,240 per disposition
- Indigent Defense Services: \$181 to \$900 per disposition
- Department of Public Safety (DPS) - Prison Section: \$0 to \$27,378 per active sentence
- DPS - Community Corrections: \$0 to \$4,437 per conviction

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

The bill adds several substances to the list of Schedules I, II, and VI controlled substances, thereby expanding all offenses that involve Schedule I, II, or VI controlled substances.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. All F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants' housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Since the bill expands several existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many additional offenders might be convicted and sentenced under the expanded statutes.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The bill expands the scope of several existing offenses. AOC does not have historical data upon which to estimate the number of additional charges that may occur. AOC provides estimates of the average cost to the court for a charge by offense class. The following table shows the cost by offense class for each subdivision of Chapter 90 impacted by the bill.

AOC		
Chapter 90 Subdivision	Offense Class	Cost
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	\$4,240
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	\$3,465
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	\$1,618
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	\$912
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	\$752
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	\$501
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	\$365
95(d)(2); 98; 108(b)	Class 1 MD	\$165
95(d)(4); 98	Class 2 MD	\$88

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. The following table shows the percentage of cases handled by IDS at each offense level as well as the weighted average cost a new charge for each offense by Chapter 90 subdivision. This estimate assumes the appointment of a PAC attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

IDS			
Chapter 90 Subdivision	Offense Class	Percent Handled by IDS	Weighted Average Cost Per Offense
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	82%	\$900
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	89%	\$789
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	79%	\$512
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	74%	\$497
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	78%	\$462
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	78%	\$353
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	68%	\$315
95(d)(2); 98; 108(b)	Class 1 MD	39%	\$188
95(d)(4); 98	Class 2 MD	30%	\$181

**Department of Public Safety –Prison Section**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2014.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Since the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many beds may be required as a result of this bill.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>
1. Inmates <sup>2</sup>	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$11.53 per day, or \$351 per month, which includes the cost of food, clothing, and health care. The following table shows the percent of convicted offenders receiving active sentences, the average length of the sentence, and the per diem cost for that sentence for each offense impacted by the bill. Please note, misdemeanor offenders will serve their time in county jails, so no costs are estimated for those offenses.

<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2015.

<sup>3</sup> Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

<b>Department of Public Safety - Prisons</b>				
<b>Chapter 90 Subdivision</b>	<b>Offense Class</b>	<b>Percent Receiving Active Sentence</b>	<b>Average Length of Sentence (Months)</b>	<b>Total Per Diem Cost of Sentence</b>
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	100%	78	\$27,378
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	100%	66	\$23,166
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	64%	27	\$9,477
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	51%	17	\$5,967
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	40%	14	\$4,914
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	35%	10	\$3,510
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	16%	6	\$2,106
95(d)(2); 98; 108(b)	Class 1 MD	30%	37 days	N/A
95(d)(4); 98	Class 2 MD	33%	21 days	N/A

**Department of Public Safety – Community Correction Section**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$130.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations.

The following table shows the percent of convicted offenders receiving active sentences, the length of PRS required, and the cost for each felony offense impacted by the bill.<sup>4</sup>

<b>Department of Public Safety - Community Corrections Post-Release Supervision (PRS)</b>				
<b>Chapter 90 Subdivision</b>	<b>Offense Class</b>	<b>Percent Receiving Active Sentence</b>	<b>Length of PRS (Months)</b>	<b>Cost of PRS</b>
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	100%	12	\$1,566
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	100%	12	\$1,566
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	64%	12	\$1,566
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	51%	9	\$1,175
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	40%	9	\$1,175
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	35%	9	\$1,175
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	16%	9	\$1,175

The following table shows the percent of convicted offenders receiving probation, the average length of probation, and the cost for each offense impacted by the bill.<sup>4</sup>

<b>Department of Public Safety - Community Corrections Probation</b>				
<b>Chapter 90 Subdivision</b>	<b>Offense Class</b>	<b>Percent Receiving Probation</b>	<b>Average Length of Probation (Months)</b>	<b>Cost of Probation</b>
95(e)(5); 95.1; 95.4(b)(2); 98	Class C Felony	0%	0	\$0
95(e)(5); 95.4(b)(1); 95.4(b)(2); 95.6; 98	Class D Felony	0%	0	\$0
95(e)(8); 95(e)(10); 95.4(a)(2); 95.4(b)(1); 95.4(b)(2); 98	Class E Felony	36%	34	\$4,437
95.4(a)(1); 95.4(a)(2); 95.4(b)(1); 98	Class F Felony	49%	32	\$4,176
95(b)(1); 95.4(a)(1); 95.4(a)(2); 95.7; 98	Class G Felony	60%	29	\$3,785
95(b)(1); 95(b)(2); 95(d1)(1); 95(e)(9); 95.4(a)(1); 98; and, G.S. 14-258.1(a) and 14-410.16	Class H Felony	65%	28	\$3,654

<sup>4</sup> Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.

<b>Chapter 90 Subdivision</b>	<b>Offense Class</b>	<b>Percent Receiving Probation</b>	<b>Average Length of Probation (Months)</b>	<b>Cost of Probation</b>
95(e)(1); 95(b)(2); 95(c); 95(d)(1); 98; 108(b)	Class I Felony	84%	23	\$3,002
95(d)(2); 98; 108(b)	Class 1 MD	70%	15	\$1,958
95(d)(4); 98	Class 2 MD	67%	13	\$1,697

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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